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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TDY HOLDINGS, et al.,) Civil No. 07-0787-JAH(WVG)
12)
13 Plaintiffs,) ORDER DENYING PLAINTIFFS'
14) APPLICATION FOR REQUIRED
15 v.) APPEARANCE AT SETTLEMENT
16) CONFERENCE
17 UNITED STATES OF AMERICA, et)
18 al.,)
19 Defendants.)
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29 The Court is in receipt of the letter dated January 6, 2010,
30 sent by Plaintiffs TDY Holdings, LLC and TDY Industries, Inc.
31 (hereafter "TDY"), in which TDY requests that the Court order
32 Defendant United States of America, et al., (hereafter "USA") to
33 have a "senior Justice Department official" personally attend the
34 Settlement Conference scheduled for February 19, 2010. The Court is
35 also in receipt of the USA's responsive letter, dated January 11,
36 2010. For reasons set forth below, the Court DENIES the request.

37 The Court is aware of the history of the litigation in this
38 case as well as the issues presented in TDY's and the USA's letters.
39 While it is true that Magistrate Judge Louisa S. Porter, previously

1 assigned to this case, ordered the USA "to have present an individ-
2 ual, other than defense counsel, who is familiar with the facts and
3 circumstances of this case, the history of the site in question, its
4 use, and remediation efforts - historically, presently, and
5 remediation plans for the future," it is not accurate nor correct to
6 represent that Magistrate Judge Porter intended a senior Justice
7 Department official to be that person. As explained in the letter
8 from then-United States Attorney Alan D. Bersin to then-Presiding
9 Magistrate Judge Roger C. McKee, dated July 18, 1996, (attached to
10 the USA's letter), the requirement to compel the appearance of a
11 senior Department of Justice official is onerous, burdensome, mostly
12 impractical, and not supported by Congressional pronouncements.
13 Although Mr. Bersin's letter is nearly 14 years old, his position
14 continues to be the policy practiced in this judicial district.

15 There is no evidence to suggest that the USA is not negotiat-
16 ing in good faith. Representations otherwise are unnecessary,
17 counter-productive, and without basis in fact.

18 Accordingly, it is ORDERED that TDY's request for a senior
19 Department of Justice official to attend the Settlement Conference
20 is DENIED.

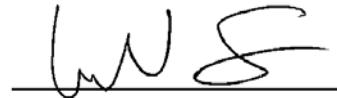
21 It is FURTHER ORDERED, consistent with Magistrate Judge
22 Porter's Orders of October 8 and 21, 2009, that counsel for the USA
23 shall be accompanied at the Settlement Conference by an individual

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1 with intimate knowledge of the site in question. This person need
2 not be a senior Justice Department official.

3 IT IS SO ORDERED.

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5 DATED: January 13, 2010

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8 Hon. William V. Gallo
9 U.S. Magistrate Judge
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